

Zoning Enabling Act

Chapter 40A General Laws

Including Amendments Through 1973

February 1974



Bureau of Regional Planning
MASSACHUSETTS DEPARTMENT OF COMMUNITY AFFAIRS
141 MILK STREET, BOSTON, MASSACHUSETTS 02109

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Chapter 1114

THE COMMONWEALTH OF MASSACHUSETTS
IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-THREE

AN ACT IMPROVING THE PROCEDURE IN CIVIL TRIALS AND APPEALS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 40A of the General Laws is hereby amended by striking out section 21, as most recently amended by chapter 334 of the acts of 1972, and inserting in place thereof the following section:

Section 21.

Any person aggrieved by a decision of the board of appeals may within twenty-one days after the decision is filed in the office of the city or town clerk bring a petition in the district court within the judicial district of which the land area to be affected is situated, addressed to the justice of the court praying that the action of the board of appeals may be reviewed by the court and after such notice as the court may deem necessary, it shall hear witnesses, review such action and determine whether or not upon all the evidence the decision exceeds the authority of the board. If the court finds that said decision was proper the action of the board shall be affirmed; otherwise it shall be annulled and the board shall be notified to change its records accordingly and to act in accordance with such decision.

Notwithstanding the provisions of the first paragraph of this section any person aggrieved by the decision of the board of appeals or of the district court, whether or not previously a party to the proceeding, and including any municipal officer, planning board or city council, may appeal to the superior court for the county in which the land is situated, by commencing a civil action within twenty days after the decision has been filed in the office of the city or town clerk or with the clerk of the district court hearing such matter. Written notice of such appeal together with a copy of the complaint shall be given to such city or town clerk within said twenty day appeal period. There shall be attached to the complaint a copy of the decision appealed from, bearing the date of the filing thereof, certified by the city or town clerk with whom the decision was filed.

Where the action is commenced by someone other than the original applicant, appellant or petitioner, such original applicant, appellant or petitioner and all the members of the board of appeals shall be named as parties defendant. To avoid delay in the proceedings the plaintiff shall cause each of the defendants to be served with process within fourteen days after the filing of the complaint, and shall, within twenty-one days after the commencement of the action, file with the clerk of the court an affidavit that such service has been made. If no such affidavit is filed within such time the action shall be dismissed. No answer shall be required but an answer may be filed. Other interested persons may be permitted to intervene, upon motion. The

court shall hear all evidence pertinent to the authority of the board and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board, or make such other judgment as justice and equity may require. The foregoing remedy shall be exclusive; but the parties shall have all rights of appeal as in other cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals and for taking such other subsequent action as parties in other cases are permitted to take.

Costs shall not be allowed against the board unless it shall appear to the court that the board in making the decision appealed from acted with gross negligence, in bad faith or with malice.

Costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

All issues in any proceeding under this section shall have precedence over all other civil actions and proceedings.

Effective July 1, 1974

Chap. 296. AN ACT PROHIBITING THE MEETING OF PLANNING
BOARDS, ZONING BOARDS OF APPEAL AND HOUSING
AUTHORITIES ON ELECTION DAYS.

Be it enacted, etc., as follows:

SECTION 1. Section 6 of chapter 40A of the General Laws is hereby amended by inserting after the fourth sentence, as appearing in section 1 of chapter 201 of the acts of 1962, the following sentence: - No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

SECTION 2. Section 17 of said chapter 40A is hereby amended by inserting after the second sentence, inserted by chapter 336 of the acts of 1968, the following sentence: - No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

SECTION 3. The third paragraph of section 31 of chapter 121B of the General Laws, at appearing in section 1 of chapter 751 of the acts of 1969, is hereby amended by inserting after the third sentence the following sentence: - No such hearing shall be held on any day on which a state or municipal election, caucus or primary is held in such city or town.

SECTION 4. The second paragraph of section 8 of chapter 665 of the acts of 1956 is hereby amended by adding the following sentence: - No such hearing shall be held on any day on which a state or municipal election, preliminary election or primary is held in said city.

Approved May 18, 1973

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Lewis S.W. Crampton
COMMISSIONER

The Commonwealth of Massachusetts
Department of Community Affairs
141 Milk Street, Boston 02109

February, 1974

The Zoning Enabling Act, Chapter 40A, was enacted by Chapters 368 and 551 of the Acts of 1954 and became effective on August 1, 1954, replacing the previous zoning enabling legislation, Sections 25 to 30B, inclusive, of Chapter 40, General Laws.

Since its enactment, there have been fifty-four amendments to Chapter 40A -- one in 1954, three in 1955, one in 1956, six in 1957, four in 1958, four in 1959, four in 1960, four in 1961, seven in 1962, four in 1963, one in 1964, three in 1965, one in 1966, two in 1968, four in 1969, three in 1970, one in 1971 and one in 1972. These amendments are noted on the following pages and have been incorporated into the text of this edition.

Procedures for the adoption and amendment of zoning by-laws, procedure for submission of same to the Attorney General, and a zoning bibliography are appended.

This edition of "The Zoning Enabling Act" was prepared for the use of Planning Boards, Boards of Appeal, government officials, private groups and others particularly interested in the growth and development of their communities.

Questions in regard to the Zoning Enabling Act should be addressed to the Department of Community Affairs, Bureau of Regional Planning. Telephone inquiries will be answered at 727-3197.

Sincerely,

A handwritten signature in cursive script that reads "Frederick A. Fallon".

Frederick A. Fallon, Director
Bureau of Regional Planning

FAF:SP

REF KFM 2858 .A355 A19 1974

Zoning enabling act

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CHAPTER 368 OF THE ACTS OF 1954
AN ACT TO AMEND THE ZONING ENABLING LAW

Section 1. Chapter 40 of the General Laws is hereby amended by striking out sections 25 to 30 - B, inclusive.

Section 2. The General Laws are hereby amended by inserting after chapter 40 the following new chapter: -

CHAPTER 40A
ZONING REGULATIONS

(published on following pages and including amendments through 1972)

Section 3. The provisions of chapter forty A of the General Laws, so far as they are the same as those of sections twenty-five to thirty B, inclusive, of chapter forty of the General Laws, shall be construed as continuations of said provisions, and the enactment of this statute shall not affect the validity of any action lawfully taken under said provisions prior to the effective date of this act.

Approved May 3, 1954
Effective August 1, 1954

AMENDMENT 1954

Chapter 551, Acts of 1954. Providing for the designation by the chairman of a board of appeals of an associate member to act in case of a vacancy, inability to act, or interest on the part of a member of said board.

Section 14 Effective August 1, 1954

AMENDMENTS 1955

Chapter 325, Acts of 1955. Providing for appeals to the boards of appeals by aggrieved persons or by any officer or board of the city or town.

Sections 13 and 15 Effective July 31, 1955

Chapter 349, Acts of 1955. Providing that the concurring vote of all except one member of a board of appeals consisting of more than four members shall be necessary on any matter upon which said board is required to pass.

Section 19 Effective August 4, 1955

AMENDMENT 1956

Chapter 586, Acts of 1956. Providing that no zoning ordinance or by-law which prohibits or limits the use of land for any educational purpose, whether public, religious, sectarian or denominational, shall be valid.

Section 2 Effective October 31, 1956

AMENDMENTS 1957

Chapter 123, Acts of 1957. Providing that a board of appeals may impose limitations, both of time and of use, when granting a variance.

Section 15

Effective May 29, 1957

Chapter 124, Acts of 1957. Providing that the mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of a zoning ordinance or by-law.

Section 14

Effective May 29, 1957

Chapter 137, Acts of 1957. Providing that in a city no zoning ordinance shall be established or changed until the city council or a committee designated or appointed for the purpose by it has held a public hearing thereon.

Section 6

Effective May 30, 1957

Chapter 145, Acts of 1957. Providing that no zoning ordinance or by-law which prohibits or limits the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian, denominational or public shall be valid.

Section 2

Effective June 2, 1957

Chapter 199, Acts of 1957. Providing that a city or town may provide any municipal officer or board with legal counsel for appealing a decision of a board of appeals and for taking such other subsequent action as parties in other equity cases are permitted to take.

Section 21

Effective June 13, 1957

Chapter 297, Acts of 1957. Providing that no amendment to any zoning ordinance or by-law shall apply to or affect any lot shown on a definitive subdivision plan for residences which has been previously approved by a planning board until a period of three years from the date of such approval has elapsed, providing that said lot complies with the provisions of the zoning ordinance or by-law existing at the time of said approval.

Section 7A

Effective April 17, 1957

AMENDMENTS 1958

Chapter 175, Acts of 1958. Providing that an appeal to Superior Court shall be taken within twenty days after decision has been filed in office of City or Town Clerk.

Section 21

Effective June 13, 1958

Chapter 202, Acts of 1958. Providing that in case of a vacancy on board of appeals, the chairman may designate an associate to act until the vacancy is filled in the usual manner.

Section 14

Effective June 23, 1958

Chapter 381, Acts of 1958. Providing that when substantial hardship is claimed when seeking a variance such substantial hardship may be "financial or otherwise."

Section 15

Effective September 7, 1958

Chapter 492, Acts of 1958. Providing that recorded isolated lots over 5,000 sq. ft. in area and of 50 ft. or more frontage may be built upon despite later greater requirements.

Section 5A

Effective October 27, 1958

AMENDMENTS 1959

Chapter 221, Acts of 1959. Providing that no amendment to any zoning ordinance or by-law shall apply to or affect any land shown on a preliminary subdivision plan for residences which has been previously submitted to a planning board and written notice of which has been filed with the city or town clerk, and on the definitive plan evolved therefrom if it is submitted within seven months from the date on which the preliminary plan was submitted and is thereafter duly approved, and for a further period of three years from the date of approval.

Section 7 A

Effective July 20, 1959

Chapter 317, Acts of 1959. Providing that public hearings for zoning adoption or amendment and for zoning board of appeals action be advertised in a newspaper of general circulation in the city or town in each of two successive weeks, the first not less than 21 days before the hearing; or if no such newspaper then by posting in conspicuous place in city or town hall for a period not less than 21 days before the hearing.

Sections 6 and 17

Effective August 17, 1959

Chapter 607, Acts of 1959. Providing that no provision of a zoning ordinance or by-law shall be valid which requires the floor area of the living space of a single-family residential building to be greater than seven hundred and sixty-eight square feet.

Section 2

Effective September 17, 1959

AMENDMENTS 1960

Chapter 291, Acts of 1960. Providing that no amendment to any zoning ordinance or by-law shall apply to or affect any lot shown on a plan previously endorsed with the words "approval under the subdivision control law not required" or words of similar import, until a period of three years from the date of such endorsement has elapsed, provided such lot complies with the provisions of the zoning ordinance or by-law existing at the time of said endorsement, and provided further, that a city or town may, in the manner prescribed for in this chapter, increase the permitted uses of any lot shown on such a plan to include other uses.

Section 7A

Effective July 5, 1960

Chapter 326, Acts of 1960. Providing that limited or conditional zoning variances and special permits shall not take effect until notice thereof is recorded in the registry of deeds.

Section 18

Effective July 17, 1960

Chapter 365, Acts of 1960. Relative to the procedure in appeals from the decisions of boards of appeal under zoning ordinances and by-laws. Strikes out the first paragraph of Section 21 and inserts two paragraphs in place thereof.

Section 21

Effective August 1, 1960

Chapter 789. Acts of 1960. Providing that the section shall not be construed to prohibit a lot being built upon if at the time of building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in such city or town.

Section 5A

Effective October 27, 1958

AMENDMENTS 1961

Chapter 151, Acts of 1961. Providing that if a city council fails to take final action on zoning adoption or amendment within ninety days after its hearing, it may not act until it holds a subsequent hearing, advertised as so provided.

Section 6

Effective May 31, 1961

Chapter 276, Acts of 1961. Providing that no member or associate member of a board of appeals shall represent before such board any party of interest in any matter pending before it.

Section 14

Effective June 21, 1961

Chapter 435, Acts of 1961. Extending zoning exemption for residential use on land on plan endorsed "approval not required" from three to five years; providing same exemption to recorded lots; extending three years exemption on subdivision land from three to five years.

Section 5A, 7A

Effective August 3, 1961

AMENDMENTS 1962

Chapter 201, Acts of 1962. Providing that notice of public hearing by planning board on zoning amendment and notice of public hearing by zoning board of appeals contain "the subject matter sufficient for identification" and that first publication or posting be at least 14 days before the hearing.

Section 6

Effective June 10, 1962

Section 17

Chapter 203, Acts of 1962. Providing that a copy of the rules of the board of appeals shall be filed with the city or town clerk.

Section 18

Effective June 10, 1962

Chapter 212, Acts of 1962. A re-wording of the provisions in regard to limited or conditional zoning variances and special permits.

Section 18

Effective June 10, 1962

Chapter 327, Acts of 1962. Providing that no provision of a zoning ordinance or by-law shall be valid which sets apart zoning districts or zones by establishing between them a boundary line which may subsequently be changed without the adoption of an amendment to a zoning ordinance or by-law so changing such line.

Section 6

Effective July 8, 1962

Chapter 340, Acts of 1962. Providing that no zoning ordinance or by-law shall prohibit the alteration, rebuilding or expansion within applicable setback requirements of non-conforming buildings, except greenhouses located in residential areas, or the expansion of land, used primarily for agriculture, horticulture or floriculture.

Section 5

Effective July 12, 1962

Chapter 387, Acts of 1962. Providing that the decision of the board of appeals must be made within ninety days of the filing of an appeal, application or petition.

Section 18

Effective July 26, 1962

AMENDMENTS 1963

Chapter 207, Acts of 1963. Providing that an appeal taken under Section thirteen shall be taken within thirty days from the date of the order or decision.

Sections 13 and 16.

Effective June 30, 1963

Chapter 578, Acts of 1963. Providing for the exemption of land shown on plans not requiring approval from the effect of zoning ordinances or by-laws becoming effective after the submission of such plans to the planning board.

Section 7 A

Effective October 28, 1963

Chapter 591, Acts of 1963. Providing that disapproval of a subdivision plan shall not terminate the exemptions of certain land from the applicability of zoning ordinances and by-laws, if disapproval is appealed.

Section 7 A

Effective October 31, 1963

AMENDMENTS 1964

Chapter 688, Acts of 1964. Providing that the five year exemption from the effect of zoning amendments shall be for five years from the date of endorsement of approval of a subdivision.

Section 7 A

Effective October 1, 1964

AMENDMENTS 1965

Chapter 63, Acts of 1965. Providing that if the city council or selectmen are designated to act on a special permit for an exception they shall be subject to the requirements of sections 18, 19, 20 and 21 in the same manner as a board of appeals.

Section 4

Effective May 26, 1965

Chapter 65, Acts of 1965. A re-enactment of Section 7 A due to a technicality caused by previous legislation. No change in text.

Section 7 A

Effective May 26, 1965

Chapter 366, Acts of 1965. Changes the zoning exemption period from five to seven years and makes the provision retroactive.

Section 7 A

Effective July 26, 1965

AMENDMENTS 1966

Chapter 26, Acts of 1966. Providing that if a city council having more than fifteen members is designated to act on a special permit, the public hearing may be held by a committee of such council designated or appointed for the purpose by the council, and the vote required to grant such special permit shall be a two-thirds vote of all of the members of such council.

Section 4

Effective March 4, 1966

Chapter 199, Acts of 1966. Changed provisions of Chapter
26 above to "more than five members."
Section 4 Effective July 24, 1966

NO AMENDMENTS IN 1967

AMENDMENTS 1968

Chapter 194, Acts of 1968. Requires that the public hearing
by the planning board be held within 60 days of
submission of proposed changes to said board.
Section 6 Effective July 25, 1968

Chapter 336, Acts of 1968. Requires advertisements for
hearings by the Board of Appeals to show certain
information in bold face type.
Section 17 Effective August 23, 1968

AMENDMENTS 1969

Chapter 572, Acts of 1969. Exempts non-conforming green-
houses in residential areas from local non-use
regulations.
Section 5 Effective October 22, 1969

Chapter 610, Acts of 1969. Allows repetitive petitions to
the board of appeals upon the consent of all but one
of the members of the planning board.
Section 20 Effective November 2, 1969

Chapter 706, Acts of 1969. Allows appeals to the district
court, as well as to the superior court, from decisions
of the board of appeals.
Section 21 Effective November 12, 1969

Chapter 870, Acts of 1969. Provides that a decision by the
board of appeals shall be made within 60 days after
the date of filing of an appeal.
Section 18 Effective November 27, 1969

Also provides that an annulment by the court of a
favorable decision by the board of appeals is not an
"unfavorable action" with respect to repetitive petitions.
Section 20 Effective November 27, 1969

AMENDMENTS 1970

Chapter 80, Acts of 1970. Restores to planning boards the
right to appeal decisions of the boards of appeals.
Section 21 Effective June 2, 1970

Chapter 271, Acts of 1970. Requires board of appeals to file
the record of its proceedings with the town clerk within
14 days.
Section 18 Effective August 4, 1970

Chapter 678, Acts of 1970. Sets a six-year statute of limitations for enforcing zoning ordinances or by-laws. Also applicable to any cause of action arising prior to the effective date of act.
Section 22 Effective November 18, 1970

AMENDMENT 1971

Chapter 1018, Acts of 1971. Requires that the record of board of appeals proceedings be filed in the office of the planning board.
Section 18 Effective February 7, 1972

AMENDMENT 1972

Chapter 334, Acts of 1972. Authorizes a city council to appeal decision of a board of appeals.
Section 21 Effective August 23, 1972

AMENDMENT 1973

None.

CHAPTER 40A GENERAL LAWS
ZONING REGULATIONS

CITATION*

Section 1. This chapter shall be known and may be cited as "The Zoning Enabling Act."

PURPOSE OF ZONING

Section 2. For the purpose of promoting the health, safety, convenience, morals or welfare of its inhabitants, any city, except Boston, and any town, may by a zoning ordinance or by-law regulate and restrict the height, number of stories, and size of buildings and structures, the size and width of lots, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, agriculture, residence or other purposes; provided, however, that no ordinance or by-law which prohibits or limits the use of land for any church or other religious purpose or for any educational purpose which is religious, sectarian, denominational or public shall be valid; and provided, further, that in regulating or restricting the size of such buildings or structures no provision of any ordinance or by-law shall be valid which requires the floor area of the living space of a single-family residential building to be greater than seven hundred and sixty-eight square feet.

Limitation of religious or educational uses invalid

Requirement of single-family floor area greater than 768 sq. ft. invalid

Zoning districts

For any or all of such purposes a zoning ordinance or by-law may divide the municipality into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this chapter, and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, and structures, or use of

*Note: Headings in this column on each page are not part of this law, but have been inserted to make research easier.

Uniformity within district

land, and may prohibit noxious trades within the municipality or any specified part thereof. All such regulations and restrictions shall be uniform for each class or kind of buildings, structures or land, and for each class or kind of use, throughout the district, but the regulations and restrictions in one district may differ from those in other districts. Due regard shall be paid to the characteristics of the different parts of the city or town, and the zoning regulations in any city or town shall be the same for zones, districts or streets having substantially the same character. A zoning ordinance or by-law may provide that lands deemed subject to seasonal or periodic flooding shall not be used for residence or other purposes in such a manner as to endanger the health or safety of the occupants thereof.

Flood plain zoning

PURPOSES OF REGULATIONS

Section 3. Zoning regulations and restrictions shall be designed among other purposes to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the city or town; and to preserve and increase its amenities.

EXCEPTIONS

May be allowed

By Board of Appeals or
City Council or Selectmen
if so provided

Section 4. A zoning ordinance or by-law may provide that exceptions may be allowed to the regulations and restrictions contained therein, which shall be applicable to all of the districts of a particular class and of a character set forth in such ordinance or by-law. Such exceptions shall be in harmony with the general purpose and intent of the ordinance or by-law and may be subject to general or specific rules therein contained. The board of appeals established under section fourteen of such city or town, or the city council

Public hearing

of such city or the selectmen of such town, as such ordinance or by-law may provide, may, in appropriate cases and subject to appropriate conditions and safeguards, grant to an applicant a special permit to make use of his land or to erect and maintain buildings or other structures thereon in accordance with such an exception. Before granting such a special permit the board of appeals, or the city council or the selectmen, whichever the ordinance or by-law provides, shall hold a public hearing thereon, notice of which shall be given in accordance with section seventeen. If the city council or the selectmen are designated to act upon such a special permit they shall be subject to the requirements of sections eighteen, nineteen, twenty and twenty-one in the same manner as the board of appeals. Notwithstanding the provisions of the two preceding sentences, if a city council having more than five members is designated to act upon such a special permit, the public hearing may be held by a committee of such council designated or appointed for the purpose by the council, and the vote required to grant such special permit shall be a two thirds vote of all of the members of such council.

NON-CONFORMING USES
(exemption of existing
uses)

Change of use and alteration
of building

Non-use of non-conforming
structures

Section 5. Except as provided in section eleven, a zoning ordinance or by-law or any amendment thereof shall not apply to existing buildings or structures, nor to the existing use of any building or structure, or of land to the extent to which it is used at the time of adoption of the ordinance or by-law, but it shall apply to any change of use thereof and to any alteration of a building or structure when the same would amount to reconstruction, extension or structural change, and to any alteration of a building or structure to provide for its use for a purpose or in a manner substantially different from the use to which it was put before alteration, or for its use for the same purpose to a substantially greater extent. Such an ordinance or by-law may

Agricultural exemption

regulate non-use of non-conforming buildings and structures so as not to unduly prolong the life of non-conforming uses; provided, that no such ordinance or by-law shall so regulate the non-use of non-conforming land used for agriculture, horticulture or floriculture where such non-use has existed for less than five years; and provided, further, that no such ordinance or by-law shall prohibit the alteration, rebuilding or expansion within applicable setback requirements of non-conforming buildings, or the expansion of land, used primarily for agriculture, horticulture or floriculture.

LOTS EXEMPT from area, frontage, width, depth and yard requirements under certain conditions

Section 5A. Any lot lawfully laid out by plan or deed duly recorded, as defined in section eighty-one L of chapter forty-one, or any lot shown on a plan endorsed with the words "approval under the subdivision control law not required" or words of similar import, pursuant to section eighty-one P of chapter forty-one, which complies at the time of such recording or such endorsement, whichever is earlier, with the minimum area, frontage, width, and depth requirements, if any, of any zoning ordinance or by-law in effect in the city or town where the land is situated, notwithstanding the adoption or amendment of provisions of a zoning ordinance or by-law in such city or town imposing minimum area, frontage, width, depth, or yard requirements, or more than one such requirement, in excess of those in effect at the time of such recording or endorsement (1) may thereafter be built upon for residential use if, at the time of the adoption of such requirements or increased requirements, or while building on such lot was otherwise permitted, whichever occurs later, such lot was held in ownership separate from that of adjoining land located in the same residential district, or (2) may be built upon for residential use for a period of five years from the date of such recording of such endorsement, whichever is earlier, if, at the time of the adoption of such requirements or increased requirements, such lot was

held in common ownership with that of adjoining land located in the same residential district; and further provided, in either instance, at the time of building (a) such lot has an area of five thousand square feet or more and a frontage of fifty feet or more, is in a district zoned for residential use, and conforms except as to area, frontage, width, and depth with the applicable provisions of the zoning ordinance or by-law in effect in such city or town and (b) any proposed structure is to be located on such lot so as to conform with the minimum requirements of front, side, and rear yard setbacks, if any, in effect at the time of such recording or such endorsement, whichever is earlier, and to all other requirements for such structure in effect at the time of building.

The provisions of this section shall not be construed to prohibit a lot being built upon, if at the time of building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in such city or town.

ADOPTION AND AMENDMENT

Public hearing and
report by Planning Board

Section 6. Zoning ordinances or by-laws may be adopted and from time to time be changed by amendment, addition or repeal, but only in the manner hereinafter provided. No zoning ordinance or by-law originally establishing the boundaries of the districts or the regulations and restrictions to be enforced therein, and no such ordinance or by-law changing the same as aforesaid, shall be adopted until after the planning board, if any, or, in a town having no such board, the board of selectmen, has held a public hearing thereon, first causing notice of the time and place of such hearing and of the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a con-

Public hearing by planning
board to be within 60
days

Public hearing by City
Council

spicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and has submitted a final report with recommendations to the city council or town meeting, or until twenty days shall have elapsed after such hearing without the submission of such report; provided, that, in case of a proposed ordinance or by-law originally establishing the boundaries of the districts or the regulations and restrictions to be enforced therein, it shall be sufficient if a public hearing is held and a final report with recommendations is submitted by a zoning board appointed for the purpose by the city council or selectmen or twenty days elapse after such hearing without such report being submitted. Said public hearing shall be held within sixty days after the proposed zoning ordinances or by-laws are submitted to the planning board by the city council or selectmen. In a city no such ordinance as proposed to be originally established or changed as aforesaid shall be adopted until after the city council or a committee designated or appointed for the purpose by it has held a public hearing thereon, at which all interested persons shall be given an opportunity to be heard. Notice of the time and place of such hearing before the city council or committee thereof and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city then by posting such notice in a conspicuous place in the city hall for a period of not less than fourteen days before the day of such hearing.

Failure of City Council
to act in 90 days re-
quires subsequent hear-
ing

"Floating" zones

TWO-THIRDS VOTE REQUIRED
FOR AMENDMENT

Protest in cities

Unanimous vote after
protest in cities for
city council less than
nine members

Three-fourths vote
nine members or more

After such notice, hearings and report, or lapse of time without report, a city council or town meeting may adopt, reject, or amend and adopt any such proposed ordinance or by-law. If a city council fails to take final action thereon within ninety days after its hearing, it shall not act thereon until after it holds a subsequent hearing advertised as above provided. No provision of a zoning ordinance or by-law shall be valid which sets apart zoning districts or zones by establishing between them a boundary line which may subsequently be changed without the adoption of an amendment to a zoning ordinance or by-law so changing such line.

Section 7. No change of any zoning ordinance or by-law shall be adopted except by a two-thirds vote of all the members of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, that in case there is filed with the city clerk prior to the close of the first hearing before the city council or committee thereof a written protest against such change, stating the reasons, duly signed by the owners of twenty per cent or more of the area of the land proposed to be included in such change, or of the area of the land immediately adjacent, extending three hundred feet therefrom, or of the area of other land within two hundred feet of the land proposed to be included in such change, no such change of any such ordinance shall be adopted except by a unanimous vote of all the members of the city council, whatever its form, if it consists of less than nine members or, if it consists of nine or more members, by a three-fourths vote of all the members thereof where there is a commission form of government or a single branch, or of each branch where there are two branches.

NO AMENDMENT TO
AFFECT LAND SHOWN ON
PRELIMINARY PLAN OR
DEFINITIVE PLAN under
certain conditions

NO AMENDMENT TO AFFECT
LAND SHOWN ON APPROVED
SUBDIVISION PLAN FOR
SEVEN YEARS

Exemptions not terminated
by disapproval

Section 7A. When a preliminary plan referred to in section eighty-one S of chapter forty-one has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, the land shown on such preliminary plan and on the definitive plan evolved therefrom, or in the absence of a preliminary plan, the land shown on a definitive plan submitted under the provisions of the subdivision control law, shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of submission of the plan first submitted while such plan or plans are being processed under said subdivision control law; and, if said definitive plan becomes approved, or is disapproved and thereafter amended and duly approved, said provisions of the ordinance or by-law in effect at the time of the submission of the first submitted plan shall govern the land shown on such approved definitive plan, for a period of seven years from the date of endorsement of such approval notwithstanding any other provision of law; provided, that if a preliminary plan is submitted, the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted. Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of the subdivision control law. Such appeal shall stay, pending an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted.

NO AMENDMENT TO AFFECT
USE OF LAND SHOWN ON
PLAN ENDORSED "APPROVAL
NOT REQUIRED", FOR THREE
YEARS

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import, provided that a city or town may, in the manner prescribed in this chapter, increase the number of permitted uses of any land shown on such a plan.

REPETITIVE PETITIONS
TO COUNCIL OR TOWN
MEETING (contingent
upon acceptance)

Section 8. After acceptance of this section or corresponding provisions of earlier laws as provided in section four of chapter four, no proposed ordinance or by-law making a change in any existing zoning ordinance or by-law which has been unfavorably acted upon by a city council or town meeting, shall be considered on its merits by the city council or town meeting within two years after the date of such unfavorable action unless the adoption of such proposed ordinance or by-law is recommended in the final report of the planning board or selectmen required by section six.

APPROVAL BY ATTORNEY
GENERAL

Section 9. When zoning by-laws or any changes therein are submitted to the attorney general for approval as required by section thirty-two of chapter forty, there shall also be furnished to him a statement explaining clearly the by-laws or changes proposed, together with maps or plans, when necessary.

EXEMPTION OF UTILITIES

Section 10. A building, structure or land used or to be used by a public service corporation may be exempted from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of public utilities shall, after public notice and hearing, decide that the present or proposed situation of the building, structure or land in question is reasonably necessary for the convenience or welfare of the public.

PERMITS

Effect on permits by
adoption or amendment
of ordinance or by-law

If issued before notice
of hearing or publication
of warrant

If issued after notice of
hearing or publication
of warrant

Section 11. In a city, no zoning ordinance or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the planning board or the zoning board, as the case may be, or, if there is neither, before the city council, has first been given; and, in a town, no zoning by-law or amendment thereof shall affect any permit issued or any building or structure lawfully begun before notice of hearing before the planning board or the zoning board, as the case may be, or, if there is neither, before the selectmen, has first been given or before the issuance of the warrant for the town meeting at which such by-law or amendment is adopted, whichever comes first; provided, that construction work under such a permit is commenced within six months after its issue, and the work, whether under such permit or otherwise lawfully begun, proceeds in good faith continuously to completion so far as is reasonably practicable under the circumstances. The issuance of a permit or the beginning of work upon a building or structure, or a change of use, after such notice has been given or such warrant has been issued, shall not justify the violation of a zoning ordinance or by-law or an amendment thereto subsequently adopted as the outcome of such hearing and in substantial accord with such notice or warrant; provided, the subsequent steps required for the adoption of such ordinance or by-law or amendment thereto are taken in their usual sequence without unnecessary or unreasonable delay.

WITHHOLDING OF PERMITS
BY ENFORCING AUTHORITY

Permits by selectmen in
absence of building laws

Section 12. The inspector of buildings in a city or town, or the officer or board having supervision of the construction of buildings or the power of enforcing the municipal building laws, or, if in any town there is no such officer or board, the selectmen shall withhold a permit for the construction or alteration of any building or structure if the building or structure as constructed or altered would be in violation of any zoning ordinance or by-law or amendment thereof; and state, county and municipal officers shall refuse any permit or license for a new use of a building, structure or land which use would be in violation of any zoning ordinance or by-law or amendment thereof. Any town, in which a zoning by-law is in force but in which there are no municipal building laws, may provide by by-law that no building shall be erected, externally altered or changed in use in such town without a permit from the selectmen; and the selectmen shall withhold such permit unless such erection, alteration or proposed use is in conformity with such zoning by-law.

BASIS FOR APPEALS

By aggrieved person

By any officer or board
of the city or town

Section 13. An appeal to the board of appeals established under section fourteen may be taken by any person aggrieved by reason of his inability to obtain a permit from any administrative official under the provisions of this chapter, or by any officer or board of the city or town, or by any person aggrieved by any order or decision of the inspector of buildings or other administrative official in violation of any provision of this chapter, or any ordinance or by-law adopted thereunder.

BOARD OF APPEALS

Council or Selectmen as
interim board

Membership of board

Terms of office

Removal of members

Associate members

Section 14. Every zoning ordinance or by-law shall provide for a board of appeals, which may be the existing board of appeals under the local building or planning ordinances or by-laws. The mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals the city council or selectmen shall act as the board of appeals. Any new board of appeals established hereunder shall consist of at least three members, who shall be appointed by the mayor, subject to the confirmation of the city council, or by the selectmen, for terms of such length and so arranged that the term of one appointee will expire each year; and said board shall elect annually a chairman from its own number. Any board so established may also act as the board of **appeals** under the local building or planning ordinances or by-laws.

Any member may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Such ordinances or by-laws may provide for the appointment in like manner of associate members of the board of appeals; and if provision for associate members has been made the chairman of the board may designate any such associate member to sit on the board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said board may designate any such associate member to sit as a member of the board until said vacancy is filled in the manner provided in this section. No member or associate member of the board of appeals shall represent before such board any party of interest in any matter pending before it.

POWERS OF BOARD OF
APPEALS

Appeals

Exceptions

Variances require all
these specific findings

- a. Special conditions affecting particular parcel or building
- b. Substantial hardship financial or otherwise
- c. Owing to conditions
- d. Relief not detrimental to public good, and
- e. Will not nullify intent or purpose of zoning

May include Limitations
in Variance

PROCEDURE FOR APPEALS

Mandatory - 30 day ap-
peal period

Section 15. A board of appeals shall have the following powers:

1. To hear and decide appeals taken as provided in section thirteen.
2. To hear and decide applications for special permits for exceptions as provided in section four upon which such board is required to pass.
3. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required, with respect to a particular parcel of land or to an existing building thereon a variance from the terms of the applicable zoning ordinance or by-law where, owing to conditions especially affecting such parcel or such building but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise to the appellant, and where desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law, but not otherwise.

In exercising the powers under paragraph three above, the board may impose limitations both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with regulations to be made and amended from time to time thereafter.

Section 16. Any appeal under section thirteen shall be taken within thirty days from the date of the order or decision which is being appealed, by filing a notice of appeal, specifying the grounds thereof, with the city or town clerk, who shall forthwith transmit copies thereof to

such officer or board whose order or decision is being appealed, and to the members of the board of appeals. Such officer or board shall forthwith transmit to the board of appeals all documents and papers constituting the record of the case in which the appeal is taken.

NOTICE OF HEARING FOR
APPEALS AND OTHER MATTERS

To be published In
newspaper

Or by posting if no
newspaper

Notice to petitioner and
property owners affected
and to Planning Board

Representation by agent
or attorney

Section 17. The board of appeals shall fix a reasonable time for the hearing of any appeal or other matter referred to it or any petition for a variance, and shall cause the notice of the time and place of such hearing thereof and of the subject matter, sufficient for identification, to be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and also send notice by mail postage prepaid, to the petitioner and to the owners of all property deemed by the board to be affected thereby including the abutters and the owners of land next adjoining the land of the abutters, notwithstanding that the abutting land or the next adjoining land is located in another city or town, as they appear on the most recent tax lists, and to the planning board of the city or town, and, if pertinent, of the adjoining city or town. The publication required by this section shall contain the following printed in bold face type: (a) the name of the petitioner; (b) the location of the area or premises which are the subject of the petition; and (c) the date and place of the public hearing. At the hearing any party whether entitled to notice thereof or not may appear in person or by agent or by attorney.

RULES REQUIRED

Adoption and filing

Meetings

Oaths and witnesses

Decision

Detailed record of
proceedings

Reasons for decisions

Notice of decisions

Section 18. The board of appeals of each city or town shall adopt rules, not inconsistent with the provisions of the zoning ordinances or by-law of such city or town, for conducting its business and otherwise carrying out the purpose of this chapter, and shall file a copy of such rules in the office of the city or town clerk. Meetings of the board shall be held at the call of the chairman, and also when called in such other manner as the board shall determine in its rules. Such chairman, or in his absence the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the board shall be open to the public. The decision of the board shall be made within sixty days after the date of the filing of an appeal, application or petition. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and in the office of the planning board and shall be public records. Notice of a decision of the board shall be mailed forthwith to parties in interest, as designated in section seventeen, and to each person present at the hearing who requests that notice be sent to him and states the address to which such notice is to be sent. Upon the granting of a limited or conditional zoning variance or special permit, the board of appeals shall issue to the land owner a notice, certified by the chairman or clerk, containing the name and address of the land owner, identifying

Limited or conditional
zoning variances or
special permits

the land affected, and stating that a limited or conditional variance or special permit has been granted which is set forth in the decision of the board on file in the office of the clerk of the city or town in which the land is located. No such variance or permit shall take effect until such notice is recorded in the registry of deeds for the county in which the land is located. The fee for recording such notice shall be paid by the owner and the notice shall be indexed in the grantor index under the name of the owner of record.

AUTHORITY OF BOARD

Section 19. In exercising the powers granted by section fifteen, a board of appeals may, in conformity with the provisions of this chapter, reverse or affirm in whole or in part, or may modify, any order or decision, and may make such order or decision as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issue of a permit.

Unanimous vote by board
if four members or less

Concurring vote of all
except one member if
more than four members

The concurring vote of all the members of a board of appeals consisting of not more than four members, and the concurring vote of all except one member of a board consisting of more than four members, shall be necessary to reverse any order or decision of any administrative official under this chapter, or to decide in favor of the applicant on any matter upon which it is required to pass under any zoning ordinance or by-law, or to effect any variance in the application of any such ordinance or by-law.

REPETITIVE PETITIONS
TO BOARD OF APPEALS
(contingent upon acceptance)

Section 20. After acceptance of this section or corresponding provisions of earlier laws as provided in section four of chapter four, no appeal or petition under paragraph three of section fifteen for a variance from the terms of such an ordinance or by-law with respect to a particular parcel

of land or the building thereon, and no application under paragraph two of section fifteen for a special exception to the terms of any such ordinance or by-law, which has been unfavorably acted upon by the board of appeals shall be considered on its merits by said board within two years after the date of such unfavorable action except with the consent of all but one of the members of the planning board; or of the board of selectmen in a town having no planning board; provided, however, that an annulment of a favorable decision of said board by the court pursuant to the authorization contained in section twenty-one shall not constitute unfavorable action within the meaning of this section.

21-day appeal period
district court

Section 21. Any person aggrieved by a decision of the board of appeals may within twenty-one days after the decision is filed in the office of the city or town clerk bring a petition in the district court within the judicial district the land area to be affected is situated, addressed to the justice of the court praying that the action of the board of appeals may be reviewed by the court and after such notice as the court may deem necessary, it shall hear witnesses, review such action and determine whether or not upon all the evidence the decision exceeds the authority of the board. If the court finds that said decision was proper the action of the board shall be affirmed; otherwise it shall be annulled and the board shall be notified to change its records accordingly and to act in accordance with such decision.

20-day appeal period,
superior court

Notwithstanding the provisions of the first paragraph of this section any person aggrieved by the decision of the board of appeals or of the district court, whether or not previously a party to the proceeding,

and including any municipal officer, planning board or city council, may appeal to the superior court for the county in which the land is situated, by filing a bill in equity within twenty days after the decision has been filed in the office of the city or town clerk or with the clerk of the district court hearing such matter. Written notice of such appeal together with a copy of the bill in equity shall be given to such city or town clerk within said twenty day appeal period. The bill shall allege that the decision exceeds the authority of the board, and any facts pertinent to that issue, and shall contain a prayer that the decision of the board or of the district court be annulled. There shall be attached to the bill a copy of the decision appealed from, bearing the date of filing thereof, certified by the city or town clerk with whom the decision was filed.

If bill filed by other than the applicant:

Parties respondent

Bill in equity

Written notice

Affidavit to court

Where the bill is filed by someone other than the original applicant, appellant or petitioner, such original applicant, appellant or petitioner and all the members of the board of appeals shall be named as parties respondent with their addresses. To avoid delay in the proceedings, instead of the usual service of process on a bill in equity, the plaintiff shall within fourteen days after the filing of the bill in equity give written notice thereof, with a copy of the bill by delivery or certified mail to all respondents, including the members of the board of appeals, and shall, within twenty-one days after the entry of the bill file with the clerk of the court an affidavit that such notice has been

Others may intervene
upon motion

given. If no such affidavit is filed within such time the bill shall be dismissed. No answer shall be required but an answer may be filed and notice with a copy and an affidavit of such notice given to all parties as above provided within seven days after the filing of the answer. Other interested persons may be permitted to intervene, upon motion. The clerk of the court shall give notice of the hearing as in other cases without jury, to all parties, whether they have appeared or not. The court shall hear all evidence pertinent to the authority of the board and determine the facts, and, upon the facts as so determined, annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exception as in other equity cases.

Legal counsel for
municipal officer or
board

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals and for taking such other subsequent action as parties in other equity cases are permitted to take.

Costs against board

Costs shall not be allowed against the board unless it shall appear to the court that the board in making the decision appealed from acted with gross negligence, in bad faith or with malice.

Costs against appellant

Costs shall not be allowed against the party appealing from the decision of the board unless it shall appear to the court that said appellant or appellants acted in bad faith or with malice in making the appeal to the court.

Precedence of action

All issues in any proceedings under this section shall have precedence over all other civil actions and proceedings.

ENFORCEMENT BY SUPERIOR COURT

Section 22. The superior court shall have jurisdiction in equity to enforce the provisions of this chapter, and any ordinances or by-laws adopted thereunder, and may restrain by injunction violations thereof; provided, however, if real property has been improved and used in accordance with the terms of the original building permit issued by a person duly authorized to issue such permits, no action, criminal or civil, the effect or purpose of which is to compel the abandonment, limitation or modification of the use contemplated by said permit or the removal, alteration or relocation of any structure erected in reliance upon said permit by reason of any alleged violation of the provisions of this chapter, or of any ordinance or by-law adopted thereunder, shall be maintained, unless such action, suit or proceeding is commenced within six years next after the issuance of such permit.

Validity of ordinance or by-law determined by Superior Court when questioned by attorney general

If the attorney general questions the validity of any ordinance or by-law adopted by a city or town under this chapter, he shall bring an information in his own name as such officer in the superior court sitting in equity for the county in which such city or town is situated for a declaratory decree to determine the validity of such ordinance or by-law.

PROCEDURAL STEPS FOR ADOPTION
of a ZONING BY-LAW by a TOWN

1st Step: Public hearing, after the required notice, by one of the following:

- a. Planning Board
- b. Board of Selectmen, if no Planning Board
- c. Zoning Board appointed for the purpose by Selectmen

The Attorney General's office advises that the best practice in giving notice is to publish the complete text of the proposed by-law, as well as the date, time and place of the hearing. Section 17 of Chapter 40A, however, requires that the notice of hearing contain "the subject matter, sufficient for identification." The proposed zoning map may or may not be published but should be referred to in the notice and should be displayed at the hearing. The notice must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such town then by posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of such hearing or if there is no such newspaper in such town then by posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of such hearing.

2nd Step: Submission of final report with recommendations to the town meeting by the Planning Board, Board of Selectmen or Zoning Board, following the public hearing.

Although the statute does not so specify, this report is usually in writing. In any case, such a report in writing is required to be submitted to the Attorney General under the provision of G.L., Ch. 40A, Sec. 9, which reads "When zoning by-laws are submitted to the Attorney General for approval there shall also be furnished to him a statement explaining clearly the by-laws proposed, together with maps or plans, when necessary." If, after the hearing, the Board recommends substantial and material changes, another hearing is advisable with due notice. In the event that the Board fails to submit a report with recommendations, at least twenty days must elapse between the hearing and any action by a town meeting.

3rd Step: Town meeting adopts, amends and adopts, or rejects the proposed original by-law by majority vote.

4th Step: Adopted by-law submitted to Attorney General for approval.

An instruction sheet to Town Clerks prepared by the Department of the Attorney General concerning such submission is submitted on page 25. This instruction sheet should be carefully read in advance of the public hearing and town meeting in order that the information and record of proceedings required for later filing shall be available.

5th Step: Approved by-law published, by one of the following methods:

- a. Posting in at least five public places and, if the town is divided into precincts, in each precinct.
- b. Printing at least three times in one or more newspapers, if any, of the town, otherwise of the county.
- c. Delivering a copy of the by-law at every occupied dwelling or apartment, and affidavits of the persons delivering the said copies shall be filed with the Town Clerk.

NOTE: A zoning by-law is not legally in effect until each step has been completed.

PROCEDURAL STEPS FOR AMENDMENT
of a ZONING BY-LAW by a TOWN

1st Step: Public hearing, after the required notice by one of the following:

- a. Planning Board
- b. Board of Selectmen, if no Planning Board

The Attorney General's Office advises that the best practice in giving notice is to publish the complete text of the proposed amendment, as well as the date, time and place of the hearing. Section 17 of Chapter 40A, however, requires that the notice of hearing contain "the subject matter, sufficient for identification." If the proposed amendment involves changes in the zoning map, a map showing the changes may or may not be published, but should be referred to in the notice and should be displayed at the hearing, and the areas to be changed should be accurately described in the notice. The notice must be published in a newspaper of general circulation in the town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such town then by posting such notice in a conspicuous place in the town hall for a period of not less than fourteen days before the day of such hearing.

2nd Step: Submission of final report with recommendations to the town meeting by the Planning Board or Board of Selectmen, following the public hearing.

Although the statute does not so specify, this report is usually in writing. In any case, a report in writing is required to be submitted to the Attorney General under the provisions of G.L., Ch. 40A, Sec. 9, which reads "When zoning by-laws or any changes therein are submitted to the Attorney General for approval, there shall also be furnished to him a statement explaining clearly the by-laws or changes proposed, together with maps or plans, when necessary." If, after the hearing, the Board recommends substantial and material changes from the amendment as originally proposed and heard, another hearing is advisable with due notice. In the event that the Board fails to submit a report with recommendations, at least twenty days must elapse between the hearing and any action by a town meeting.

3rd Step: Town meeting adopts or amends and adopts by a two-thirds vote or rejects the proposed amendment.

4th Step: Adopted amendment submitted to Attorney General for approval.

An instruction sheet to Town Clerks prepared by the Department of the Attorney General concerning such submission is submitted on page 25. This instruction sheet should be carefully read in advance of the public hearing and town meeting in order that the information and record of proceedings required for later filing shall be available.

5th Step: Approved amendment published, by one of the following methods:

- a. Posting in at least five public places and, if the town is divided into precincts, in each precinct.
- b. Printing at least three times in one or more newspapers, if any, of the town, otherwise of the county.
- c. Delivering a copy of the by-law at every occupied dwelling or apartment, and affidavits of the persons delivering the said copies shall be filed with the Town Clerk.

NOTE: A zoning amendment is not legally in effect until each step has been completed.

PROCEDURE FOR SUBMISSION OF BY-LAWS AND AMENDMENTS
TO THE ATTORNEY GENERAL

(as prepared by that office, with special reference
to zoning by-laws.)

1. All papers must be attested or certified by the Town Clerk under seal of the town.
2. Only the by-laws themselves and any zoning maps, to be approved by the Attorney General, must be in duplicate.
3. Please state the date and the manner by which notice of the warrant was given to the citizens, and whether the notice complied with the by-law as to said notice, and submit a copy of the articles in the warrant under which the by-laws were adopted.
4. The number of votes in the affirmative and the number in the negative should also be reported.
5. Please state whether or not there was a quorum at the town meeting at which action was taken.
6. In case of a zoning by-law, submit maps in file size (not larger than about 24" x 36", preferably smaller) with proper legends showing the areas of existing zoning districts. The changes to be made by amendment should be shown in color and be labeled by article number. The map should be attested, under seal, as being the zoning map of the town.
7. In case of a zoning by-law, please furnish a copy of the notice of the public hearing, the dates published, and the date of public hearing by the Planning Board, or, in the absence of a Planning Board, by the Board or Committee authorized by General Laws, Chapter 40A, Section 6.
8. If a report of the Planning Board was made, it should be submitted. It must contain the recommendations of the Board to the town meeting, for or against adoption, with or without changes in the proposed by-law or amendment. (Perfecting amendments may be made, but substantial changes may not go beyond the scope of the subject matter of the hearing or warrant.) It must be signed by the Planning Board; the clerk should certify that they are members of such board. The record should show that the report was made to the town meeting. An informal supplementary report may be furnished showing reasons for zoning changes.
9. By-laws must be published after approval by the Attorney General, as provided in G.L. Ch. 40, Section 32, by posting or newspaper publication.
10. By-laws should be submitted to the Attorney General promptly after vote of the town, within 60 days of final adjournment of the meeting at which they were adopted.

RELATED READING MATERIALS

MASSACHUSETTS

Local Planning - Objectives and Basic Procedures. Massachusetts Department of Community Affairs, 141 Milk Street, Boston, Mass., 02109. 23 pages and maps.

Planning Law and Administration in Massachusetts. Shurtleff and Cantelmo. Loose leaf. Mass. Federation of Planning Boards.

Preparation of a Zoning By-Law. Massachusetts Department of Community Affairs, 141 Milk Street, Boston, Mass., 02109. 24 pages, map and chart.

Statement on Appeal Board. John O. Rhome, Moderator, Town of Wellesley, Massachusetts. Massachusetts Department of Community Affairs, 141 Milk Street, Boston, Mass., 02109. 5p. mimeo.

Some Questions and Answers Regarding a Zoning Board of Appeals. Louis H. Smith. Massachusetts Department of Community Affairs, 141 Milk Street, Boston, Mass., 02109. 8p. mimeo.

Massachusetts Practice, Municipal Law, Vol. 18 Ch. 17. Henry W. Hardy. West Publishing Co. St. Paul, Minn.

Senate 1133 (1968) Report of the Massachusetts Legislative Research Council Relative to Restrictions to Zoning Power to City and County Governments. Public Documents, Room 116, State House, Boston. 196 p.

House Bill 5009 (1972) An Act to Modernize the Zoning Enabling Statute. Massachusetts Department of Community Affairs, 141 Milk Street, Boston, Mass., 02109. 97 p.

NATIONAL

Principles and Practice of Urban Planning. William I. Goodman. The International City Managers Assn., 1313 East 60th St., Chicago, Ill. Fourth edition 1968. 620 p.

NIMLO Model Zoning Ordinance. National Institute of Municipal Law Officers, 726 Jackson Place N.W., Washington, D.C.

American Law of Zoning. Robert M. Anderson. The Lawyers Cooperative Publishing Co., Rochester, N. Y. 4 vols.

The Zoning Game. Richard F. Babcock. University of Wisconsin Press, 1969. Madison, Wisconsin. 202 p.

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